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*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
*Washington, D.C. 20554*

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of: )  
)  
Closed Captioning and Video )  
Description of Video Programming )  
)  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
)  
Video Programming Accessibility )

MM Docket No. 95-176

**COMMENTS OF E! ENTERTAINMENT TELEVISION, INC.**

E! Entertainment Television, Inc. ("E!") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding on video programming accessibility.<sup>1</sup> We at E! fully support the objective of making television programming more accessible to the hearing disabled, and we already are working toward this goal on our network. Currently, captioned programming comprises at least 35% of E!'s typical weekly schedule, and E! desires to increase the amount and variety of captioned programming that will be available in the future.

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<sup>1</sup> E! is a 24-hour, advertiser supported basic cable network originating in Los Angeles and presenting news and features centered on the world of entertainment. During the first ten years since the network commenced operation as a regional program service to fewer than two million subscribers in the Los Angeles area, we have overcome serious obstacles to gain the audience support and financial backing we enjoy today. We currently reach over 40 million households nationwide and employ 350 people in the Los Angeles area. Each day from our own state-of-the-art production facility, we produce several hours of original programming as well as a variety of live event programs, original specials and series throughout the year.

## **I. INTRODUCTION**

In virtually every other Commission rulemaking proceeding in which we have participated in recent years,<sup>2</sup> our position has been shaped by the importance to our growth and, indeed, our survival, of increasing E!'s audience in every way possible. Aside from the fact that increasing accessibility of television programming is the right thing to do, it makes good business sense for E!. Accordingly, E! supports several key proposals put forth in the *Notice*. Described below is an intelligent and practical means of advancing the objective of programming accessibility.

## **II. TRANSITION**

The volume of programming on the many channels available over the air and on cable is so great that captioning of all programming on television cannot be accomplished overnight. The *Notice* demonstrates an awareness of the significant administrative and financial costs that program captioning on such a massive scale would entail. E! agrees with the Commission's conclusion that the orderly implementation of closed captioning requirements requires a reasonable transition period.

### **A. New Product**

Besides the initial capital outlay for captioning equipment, E! has determined that to reach the captioning targets proposed in the *Notice* using in-house capability, it will have to hire two full-time stenocaptioners, at an annual salary of approximately \$75,000 each, plus benefits, as well as providing for temporary assistance to cover sick days, vacations and transition periods during employment changes. (It has tentatively been determined that because of the use of in-

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<sup>2</sup> See, e.g., comments of E! in MM Docket No. 92-266 and CS Docket No.96-60.

house personnel will be more economical for E! than out-sourcing its captioning activity, due to, among other factors, the large volume of daily, weekly and live programming produced by E!.) The average total cost for captioning a program would include not just the cost of the stenocaptioners but also the cost of personnel and resources involved in administration, editing and post-production functions. As the Commission has recognized, a phase-in of captioning after the effective date of the new rules will allow for a substantial increase in the amount of captioned programming available without unduly burdening networks by requiring the immediate absorption of a significant new operating expense.

Apart from the considerable financial burden that captioning will impose, there remain a number of practical difficulties. For example, initially there may be an insufficient pool of *experienced* stenocaptioners available to handle the tremendous volume of work required by the entire programming industry. A publication of TheCaptionCenter of the WGBH Educational Foundation observes, “Stenocaptioners are well paid professionals with years of training in steno. *Few people have such highly specialized skills.* Once a stenocaptioner is hired, that person trains several more months, and then spends several hours daily preparing for each broadcast.” (Emphasis supplied.) The transition period will enable the pool of stenocaptioners with not just the requisite training but also sufficient *experience* in their profession to develop apace with the increased demand for their services. In addition, technological breakthroughs may occur during the transition period, making new devices available to facilitate the captioning process. The ten year transition option raised by the *Notice* would enable E! and other networks to incorporate captioning into their operations at a rational, reasonable rate; however, we support a slight lengthening of the first target date from two to three years, as the initial steps toward compliance (captioning of new product) will be the most difficult.

## **B. Library Programming**

Currently about seven hours per day on E! consists of acquired programming. Although E! increasingly is moving away from reliance on such acquired library programming, our experience in the program acquisition market is consistent with the observations in the *Notice*: off-network and syndicated programming produced in relatively recent years increasingly tends to be captioned. We therefore favor allowing marketplace forces to govern implementation of captioning for library programming in lieu of fixed goals and timetables. We also agree with the Commission's assessment that 100% of such programming need not be closed captioned at the end of any transition period in order to be consistent with the statutory mandate.

## **C. Compliance**

The Commission's implementation proposal covering new product requires the phase-in of captioning in 25% increments over a period of years but does not specify a time period (day, week, month, etc.) over which compliance with the 25% standards is to be measured. E! urges the Commission not to require evaluation on a daily basis, as program schedules tend to vary from day to day, with significant differences in programming during the week as opposed to on the weekend. On our network, days on which we do live coverage of special events in the entertainment industry such as the Oscars, Emmys and Grammy Awards tend to differ significantly from our normal daily line-up. Thus, assessment of compliance on such days would not provide an accurate picture of compliance overall. This would give programming networks greater flexibility in scheduling and would permit departures from set schedules for weekly/weekend audiences coverage of special events.

### **III. Exempt Programming**

#### **A. Live Coverage of Unscheduled Events**

As noted above, one of E!'s distinguishing characteristics is the unique coverage it provides of many special events that occur during the year in the entertainment industry. From its vantage point in Los Angeles, E! is often present to provide live coverage of major entertainment industry events such as the Academy Awards and the latest film openings. Some of this coverage, such as E!'s recent live telecast of the announcement of the verdict in the Simpson civil trial (which followed E!'s gavel-to-gavel coverage of the biggest criminal trial of the century in the entertainment industry ) is unscheduled. To a much greater extent than with taped or scripted programs, such live coverage requires the use of exceptionally skilled, more experienced stenocaptioners to do the captioning.

It is important for the Commission to recognize that while E!'s coverage of live, unscheduled events is an important feature of its overall mission, this type of programming occurs much less frequently on E! than it would with, for example, a major news organization. Although E! plans to have several well-qualified stenocaptioners permanently on its staff, there may be occasions on which E! wants to cover a late-breaking event but when its normal videocaptioning personnel may be unavailable due to illness, vacation or other duties, and qualified outside replacements may be extremely expensive or unavailable on short notice. It would be unfortunate indeed for E!'s audience if we could not provide live coverage of such events because of the temporary unavailability of a stenocaptioner. For this reason, live coverage of unscheduled events on a network like E!, that is not in the primary business of live news

coverage or that lacks the resources of a broadcast network news department, seems to lend itself well to an exemption from the captioning requirement.

**B. Short-form Programming Such as Promotional Announcements, “Interstitials” and Commercial Spots**

The *Notice* also raised the issue of whether short-form programming such as promotional announcements, brief, interstitial material and commercial spots are categories of programming potentially suitable for an exemption from the captioning requirements. Currently, E! does not air interstitial programs. Promotional announcements and commercial spots aired on the network are extremely brief. A typical E! promo is thirty seconds in length. E! also runs occasional “bumper” material as program intros; these typically are eight to ten seconds in length. Commercial spots are sold in fifteen second increments, with the most prevalent duration being 30 seconds and the maximum spot generally not exceeding 90 seconds. The effort required to caption such brief material would be a disproportionately great burden. This type of programming, too, seems ideally suited to be an exempt category.

**C. “Safe Harbor” Provision**

Because many of the categories of programming for which captioning will be unduly burdensome are likely to constitute a very small part of the network’s entire program schedule, the Commission may wish to provide for a “safe harbor” provision for new product. If a network otherwise has made a good faith effort to caption the applicable percentage of its new product, a small departure from the regulatory benchmarks for compliance during and at the end of the transition period for unusual cases or special types of programming should not be grounds for

finding a violation of the rules. Adoption of such a policy would be a workable solution for handling small but difficult situations that may be identified as “exemption material” after the new rules are adopted without involving the Commission in endless proceedings to modify the rules. In an era when program formats and practices are rapidly evolving, this seems a sensible approach to take.

#### **IV. Standards for Quality and Accuracy**

Closed captioning on a massive scale will be implemented at a time when diversity and creativity in the programming industry is at an all-time high. In addition, we are poised on the brink of the digital era of video, and many new technological developments can be expected to occur. For these reasons, this definitely is *not* a good time for the Commission to impose rigid standards on the quality and accuracy of non-technical aspects of captioning as a general matter. To do so not only could stifle experimentation with new program content and format but also could delay the introduction of new technology that could facilitate and improve captioning in the long run.

More specifically, strict standards for non-technical aspects of captioning -- formats, accuracy, spelling, reproduction of non-verbal sounds and the like -- present particular problems for E!’s unique, live coverage of special events in the entertainment industry. E!’s behind-the-scenes approach to events such as the Oscars, Emmys, Grammys, Golden Globes and Daytime Emmys differs significantly from the broadcast networks’ typical coverage of the ceremonies at which such awards are presented. For the Academy Awards, for example, E!’s coverage begins several months in advance, with live coverage of the announcement of the Academy Award

nominations, and continues with a two hour preview immediately before the ceremony. Our “pre-Oscar” program features on-the-scene, spontaneous interviews with nominees, past winners and celebrity guests arriving at the ceremony. E! also regularly provides similar, live, on-the-scene coverage of parties attendant to awards events, openings of major films, premieres of theatrical works, and openings or special events from Hollywood clubs and restaurants and other entertainment industry gatherings.

Coverage of these events by the hosts and interviewers is completely improvised. Often they do not know in advance with whom they will be successful in securing on-the-spot interviews or how their interview subjects will respond. It would be impossible to capture the vitality and excitement of being at a club opening or backstage after a premiere without the attendant crowd noise, background music, etc. This type of coverage presents obvious challenges for captioners, who transcribe into captions exactly what they are hearing with little or no advance research or preparation while contending with many simultaneous conversations and background noise. While E! intends to hire the best-qualified, most experienced stenocaptioners available, it is unrealistic to expect *verbatim*, 100% accurate transcription in such circumstances. On the other hand, the uniqueness of the format would be lost if captioning standards dictated the extent or manner of the coverage.

## **V. Conclusion**

E! believes that the statutory goal of increasing accessibility of television programming can be achieved while still: (i) allowing for a reasonable transition period to maximum captioning; (ii) establishing appropriate exemptions for categories of programming for which the difficulty and cost of captioning is unduly burdensome and providing for a safe harbor for new




product; and (iii) refraining from adoption of standards for quality and accuracy of non-technical components of captions at this time. The fair and balanced approach taken by the Commission in its *Notice*, with a few minor revisions suggested in our comments, will enable the programming industry to work with multichannel video distributors and those members of our audience requiring greater access to achieve optimal results.

Respectfully submitted,

B! ENTERTAINMENT TELEVISION, INC.

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By



Mark Feldman  
Sr. Vice President of Business  
and Legal Affairs